

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: DIVIDEND SOLAR FINANCE, LLC, AND FIFTH
THIRD BANK SALES AND LENDING PRACTICES LITIGATION** MDL No. 3128

TRANSFER ORDER

Before the Panel: Plaintiff in the Middle District of Florida action listed on Schedule A (*Khan*) moves under Panel Rule 7.1 to vacate the order that conditionally transferred her action to MDL No. 3128. Defendant Fifth Third Bank, National Association, opposes the motion. Defendant Affordable Solar Roof & Air, LLC, did not respond to the motion.

After considering the argument of counsel, we find that this action involves common questions of fact with the actions previously transferred to MDL No. 3128, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the District of Minnesota was an appropriate Section 1407 forum for actions sharing factual questions arising from allegations that plaintiffs were induced to finance the purchase of residential solar systems with Dividend through the deceptive sales tactics of solar sales and installation companies with which Dividend partnered. *In re Dividend Solar Fin., LLC, and Fifth Third Bank Sales & Lending Pracs. Litig.*, 753 F. Supp. 3d 1365 (J.P.M.L. 2024). MDL plaintiffs contend that the solar companies made false representations regarding both the solar systems to be installed and the terms of Dividend’s financing, and that the amounts of the loans improperly included undisclosed finance fees. *Id.* at 1366. Like the MDL plaintiffs, plaintiff in *Khan* alleges that a solar company representative, acting as Dividend’s agent, induced her through high-pressure sales tactics and misleading representations to finance the purchase of a residential solar system with Dividend. The action thus falls within the scope of the MDL.

Plaintiff argues that transfer is not appropriate because her action is not a putative class action and involves case-specific issues of fact and issues of Florida law that should be addressed by a Florida court. She further contends that transfer will cause her inconvenience and will delay resolution of her claims. We rejected similar arguments when we established the MDL and have continued to do so in denying motions to vacate conditional transfer orders in this docket. For example, in our February 2025 order transferring four individual actions to the MDL, we noted that “[p]laintiffs . . . argue that centralization is inappropriate because their respective actions present case-specific issues of fact concerning, for example, the solar companies that sold them their systems and their specific experiences with the solar systems installed.” Transfer Order at 1-2, MDL No. 3128 (J.P.M.L Feb. 6, 2025), ECF No. 128. We nonetheless ordered transfer of all four actions because, despite any case-specific issues, “[t]he actions share common questions of fact concerning, *inter alia*, the relationship between Dividend and the solar companies, the tactics employed by the solar companies to sell solar systems and originate loans, whether Dividend and

the solar installers worked together to develop and employ such tactics, the nature of the sale and loan agreements, and representations made by the solar companies and Dividend regarding the solar power systems and the terms of the agreements.” *Id.* at 2 (citation modified). Similarly, we have rejected individual plaintiffs’ arguments that transfer will cause them inconvenience or delay resolution of their claims. *Id.* (“[I]n deciding issues of transfer under Section 1407, we look to the overall convenience of the parties and witnesses, not just those of a single plaintiff or defendant in isolation.”) (citation modified). Transfer of the *Khan* action is warranted for the same reasons.

Plaintiff’s other arguments against transfer are also unpersuasive. She contends that her action was improperly removed to federal court and that we should vacate the conditional transfer order and allow the transferor court to decide her remand motion, or that we should remand the action to state court ourselves. But “Section 1407 does not empower the MDL Panel to decide questions going to the jurisdiction or the merits of a case, including issues relating to a motion to remand.” *In re Ford Motor Co. DPS6 PowerShift Transmission Prods. Liab. Litig.*, 289 F. Supp. 3d 1350, 1352 (J.P.M.L. 2018) (citation modified). And “there is no need to delay transfer in order to accommodate any interest of the transferor court in resolving a pending remand motion,” since that court retains jurisdiction while a motion to vacate is pending and “those courts wishing to address such motions have adequate time in which to do so.” *In re Prudential Ins. Co. of Am. Sales Pracs. Litig.*, 170 F. Supp. 2d 1346, 1347 (J.P.M.L. 2001). Plaintiff may renew her motion in the transferee court, which has handled such motions promptly.

Finally, plaintiff contends that the transfer order was issued without providing her an adequate opportunity to present arguments against transfer, in violation of Local Rule 3.01(g)¹ and her due process rights. We assume that plaintiff means she was not provided with an opportunity to oppose issuance of the *conditional* transfer order, since she was provided an opportunity to oppose transfer of her action to the MDL.² Indeed, plaintiff availed herself of that opportunity.³ Consequently, she has been afforded due process.

¹ While it is not clear, plaintiff may be referring to Middle District of Florida Local Rule 3.01(g), which requires that parties meet and confer in good faith before filing certain motions in civil actions. The transferor court’s local rules do not apply to Panel proceedings.

² Issuance of a conditional transfer order does not immediately effect the transfer of a potential tag-along action; rather, parties to the action have seven days to oppose transfer if they wish to do so. Panel Rule 7.1(b), (c). If any party timely opposes transfer, a briefing schedule is set to allow the parties to assert their respective positions and arguments with respect to transfer. *Id.*; see also Panel Rule 7.1(f). This procedure was followed with respect to plaintiff’s action. See Conditional Transfer Order (CTO-14), MDL No. 3128 (J.P.M.L. May 9, 2025), ECF No. 159; Notice of Filed Opposition to Conditional Transfer Order (CTO-14) and Publication of Briefing Schedule, *id.* (J.P.M.L. May 13, 2025), ECF No. 162.

³ See Plaintiff Zamana Khan’s Motion to Vacate Conditional Transfer Order 14, with Memorandum in Support, *id.* (J.P.M.L. May 27, 2025), ECF No. 167.

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IT IS THEREFORE ORDERED that the action listed on Schedule A is transferred to the District of Minnesota and, with the consent of that court, assigned to the Honorable Katherine M. Menendez for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in black ink, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell
Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez
Madeline Cox Arleo

**IN RE: DIVIDEND SOLAR FINANCE, LLC, AND FIFTH
THIRD BANK SALES AND LENDING PRACTICES LITIGATION**

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SCHEDULE A

Middle District of Florida

KHAN v. DIVIDEND, A DIVISION OF FIFTH THIRD BANK NATIONAL
ASSOCIATION, ET AL., C.A. No. 6:25-00804